

SPECIAL COUNSEL WILL BE RETAINED IN BANK CASE

Attorney Key Pittman Wishes to Re-sign From Position But is Chosen by Unanimous Consent of Commissioners to Continue.

Owing to the discussion of several local legal lights concerning the right of the county commissioners to employ special counsel in the matter of bringing suit against the Nye and Ormsby County bank to recover the funds on deposit there when that institution failed, Hon. Key Pittman yesterday presented to the board a request that he be permitted to resign from the service. His letter quotes a number of authorities which state that the commissioners have the power to employ counsel whenever they see fit.

Accompanying the letter of Mr. Pittman was one from the district attorney on the same lines. Both letters are herewith printed in full:

September 13th, 1909.
To the Honorable Board of County Commissioners of Nye County, Tonopah, Nevada.
Gentlemen:—At a meeting of your board, held in the month of July of this year, you employed me as special counsel to assist the district attorney's office in the prosecution of such suits as might be deemed necessary to recover money due Nye County by ex-County Treasurer Gilbert, his bondsmen, the Nye and Ormsby County bank, and other parties. This employment was not sought by me, as you are aware. Your honorable board requested me to state my fee for such services. Upon my stating the fee, you retained me in such matter.

The district attorney's office has not instituted suit in such matters for the reason that until the present time there was reason to believe that certain county security might be obtained without legal action and the county thereby saved the cost and delay of legal proceedings to such extent. It is apparent now, however, that the county has no alternative, and must institute and prosecute legal proceedings without further delay.

I have been informed by your Mr. Cuddy that there has been considerable discussion between certain parties and the county commissioners as to the right of the county commissioners to employ special counsel in such matters.

The supreme court of Nevada, in Ellis vs. Washoe County, 7 Nevada, page 291, says:

"This particular power is not given in express terms, but the power to control the prosecution or defense of all suits to which the county is a party," which is given in subdivision 12 of section 8, Laws of 1871, clearly embraces the power to employ counsel to protect the interests of the county. Litigation can only be controlled by means of attorneys having the authority to appear in the courts; hence, to give full effect to this power, the commissioners must in the very outset have the power to employ counsel. Nor is it an answer to say that the law designates and provides an attorney for that purpose—the district attorney; for it is not infrequently the case that he may be unable to attend to the business of the county, or its interests in some particular suits may be of such magnitude that the assistance of other counsel would be very desirable or possibly indispensable. Upon a similar statute, and under like circumstances, the supreme court of California has held, in conformity with these views, first in the case of Smith vs. Mayor, 13 Cal. 531, and again in Hornblower vs. Duden, 35 Id. 664. In the latter case, the court says upon this question: 'The point as to the power of the board to employ other counsel than the district attorney is answered by the case of Smith vs. Mayor, and nothing need be added to what was there said. While the power is not expressly conferred, yet it is obviously embraced in the general power to control the prosecution and defense of all suits to which the county is a party—which we conclude to mean not only suits to which she is a party upon the record, but all suits in the prosecution or defense of which she has, or is supposed to have, an interest.' So we construe the act of this state to confer the power, not only to control all suits to which the county is a party of record, but to such as it may be a party in interest merely. Such was manifestly what the legislature meant by party to a suit."

Judge Hawley, delivering the opinion of the supreme court in Clark vs. Lyon County (8 Nevada, at page 188), uses the following language:

"The first part of this question is readily answered in the affirmative. The statute of this state makes it the duty of the board of county

commissioners to control the prosecution or defense of all suits to which the county is a party.' (Stats. 1864-5, 259, Sec. 8), and it has been decided in California under a similar statute that the commissioners have the power to employ counsel other than the district attorney. Hornblower vs. Duden, 35 Cal. 664. It follows, that having the power in the first instance to employ counsel, the commissioners had the power to ratify the unauthorized act of the district attorney in employing plaintiffs to assist him in the suit of the Virginia & Truckee Railroad Co. vs. Lyon County. Zottman vs. San Francisco, 20 Cal. 105; The People ex rel. Alexander vs. Swift, 31 Cal. 26."

It is apparent from the foregoing opinions that the county commissioners have authority to employ special counsel even though it is the duty of the district attorney to represent the county in the same matters. The recent act of the legislature with regard to the district attorney's office, while it restricts the district attorney's office in the employment of deputies, does not and cannot restrict the board of county commissioners in their authority to control the prosecution and defense of all suits to which the county is a party.

While your honorable board has already retained me as special counsel in the matter, I do not desire to continue to act on behalf of the county unless it is still the unanimous desire of the entire board of county commissioners.

I consider the fee fixed by me as very low, considering the probable length and complexity of the proposed litigation, the number and character of defendants involved, and the number of attorneys that will unquestionably be employed to represent the various defendants; and I would not have undertaken such services except by reason of my friendship for each of the county commissioners and for Cleve Baker, the district attorney. I believe that conditions have arisen which throw a far greater burden upon the district attorney's office than that office should be required to bear.

You will kindly express to me your wishes in the matter without delay, that I may take the proper action.

Very respectfully,
KEY PITTMAN.

September 11, '09.
Honorable Board of County Commissioners, Nye County, State of Nevada.

Gentlemen:—At your meeting of July, 1909, you passed a resolution authorizing the employment of an attorney to assist this office in the legal actions which your honorable body contemplated instituting against Mr. R. F. Gilbert, formerly treasurer of Nye county, and his bondsmen, and other contemplated litigation.

I may say that my office is duly grateful to you for this proffered assistance, but at this time I desire to state that even though there will be a great deal of work added to the ordinary volume of business attached to the office in carrying on these matters, that owing to the present financial conditions of our county, this office is perfectly willing to undertake this additional work without the assistance of outside counsel, and we intend to carry on the same as expeditiously as possible, and without the least expense to the county.

Thanking you kindly for your consideration in the premises, I beg to remain,

Yours respectfully,
CLEVE H. BAKER,
District Attorney of Nye County.

The board, after carefully considering the matter, decided to keep Mr. Pittman as special counsel, realizing that the enormous amount of work would be more than one man could handle beneficially, and the board promptly notified the attorney of its action.

Mr. Pittman will start on his labors immediately, assisted by District Attorney Cleve H. Baker, and will make a strong endeavor to recover from the Nye and Ormsby bank a sum corresponding to that on deposit by the county when the

bank closed. It may be necessary that several suits will have to be filed both against the bank officials and the receiver.

HUNTING SEASON OPENS FIFTEENTH OF THIS MONTH

DEER, GROUSE, DUCKS AND MOUNTAIN QUAIL PLENTIFUL THIS YEAR

The open season for the hunting of deer, grouse, mountain quail and ducks will commence September 15, and advices received from Walley Hot Springs state that game will be very plentiful this year. The management of that resort has a hunting reserve which is exclusive for the guests. The hotel there has been completely remodeled and everything for the comfort of the visitor has been carefully looked after. The Springs are kept open the year around and have become famous for the cures effected. Parties contemplating taking a hunting trip in the near future would do well to correspond with the management of the resort.

BAT NELSON'S BOOK HAS ARRIVED IN TONOPAH

LIFE, BATTLES AND CAREER OF THE CHAMPION ARE NOW ON SALE

"Battling Nelson, His Life, Battles and Career" has arrived in Tonopah and can be secured at Rounsevell's stationery store, Mr. Rounsevell having secured the agency. The book is from the pen of the champion and contains a lot of interesting episodes from the time he started out in the fighting game until he captured the belt. It is illustrated with cartoons by Tad and Edgren, the famous sporting writers of New York.

NOTICE TO ALL JURORS OF THE DISTRICT COURT

All jurors who have been summoned to appear on Wednesday, September 15, 1909, are hereby notified not to appear until Monday, September 20th, 1909, at 10 o'clock a. m.

ROBERT G. POHL,
Clerk of District Court.

DRESSY MEN.

Have your measure taken for a Fall Suit or Overcoat. The latest patterns \$18 to \$45. General satisfaction warranted. 9-8tf
RYAN & STENSON.

FOR SALE 500 Hard Wood Chairs. 4 Stoves. Large Ice Chest. AT A BARGAIN

See Committee on Eagles' Pavilion.
E. MALLEY,
E. WALKER,
J. H. CONLEY,
Committee.

NOTICE OF DISSOLUTION; CO-PARTNERSHIP

Notice is hereby given that the co-partnership, heretofore existing, between G. W. Summerfield & W. S. Johnson, under the firm name and style of Summerfield & Johnson and W. S. Johnson Company, has this day been mutually dissolved and no longer exists for the transaction of any business, except the winding up of its affairs. W. S. Johnson will continue the business.

Dated this first day of September, 1909.
G. W. SUMMERFIELD,
W. S. JOHNSON,
9-3-30t.

SEE
Dr. Geo. P. DeVine
FOR GLASSES
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(PERSONAL)

Charles Parker left yesterday for Golden Arrow.
J. Koepp of Millers was in Tonopah last evening.

Major J. H. Monteath departed yesterday for a brief visit to Los Angeles.

County Commissioner Sam F. Lindsay came up from Rhyolite Sunday evening.

Chris Zeigler, the head of the Millers meat trust, came up from the mill city last evening.

W. C. Humphreys, county commissioner from Manhattan, arrived from the north Sunday.

Senator H. V. Morehouse, the Goldfield attorney, was transacting legal business in this city yesterday.

Mrs. Ed Malley and son, George Malley, returned Sunday from Los Angeles, where they spent the summer.

J. Watts Briggs came in from Hawthorne yesterday, and leaves in a few days for a visit to the north camps.

J. Wesley Reed, of San Francisco, was an arrival yesterday. He comes to inspect the mines of this district.

Mrs. J. H. McLaughlin, of Manhattan, arrived yesterday from the placer camp. She is en route to Sacramento for a visit to her parents.

Superintendent Fred Corkill of the West End, Consolidated Mining company returned yesterday morning from a visit to the Lucky Boy district.

* Miss Della Gilbert, who is teaching school at Golden Arrow, departed for that camp yesterday, after spending a few days with her parents in this city.

J. Del Buono, the Western Union telegraph operator, leaves this morning for San Francisco where he will accept a tick in the main office of the Western Union in that city. Mrs. Del Buono and child will follow in a few days.

Miss Minnie Gunville, who arrived Saturday from Golden Arrow, where she has been spending the summer with her mother, left yesterday for Goldfield to visit a few days with her brother, Dr. Gunville. She will proceed in a few days to Detroit to spend the winter.

The Miner's Cafe NOW OPEN FOR BUSINESS

Do you want something good to eat? If so, come to the Miner's Cafe. Everything neat and clean and cooked to your taste. Our motto:

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will always be maintained. Our prices are reasonable, our Dinners will be Excellent, and everything Palatable. Give us a trial. Enough said.

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DELEGATES TO MINING CONGRESS ARE APPOINTED

BOARD OF COUNTY COMMISSIONERS MAKE SELECTIONS YESTERDAY

The honorable board of county commissioners met yesterday at the regular session, and transacted business.

A citizens' committee appeared before the board with the request that they donate the sum of \$100 to be turned over to the finance committee for the entertaining of the mining congress. This the commissioners agreed to and before adjourning last evening ordered a warrant drawn for the amount.

The board also appointed delegates from Nye county who will attend the congress. These representatives are Walter P. Cole and J. F. Dennis of Tonopah; John A. Largent and F. H. Stickney of Rhyolite; J. B. Giffen and T. J. Bell from Manhattan, Reese River and at large.

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COMMERCIAL RATES

MISCELLANEOUS

FOR SALE CHEAP—Baby buggy and high chair. 405 St. Patrick street. 9-12-2t

FOUND—A pair of gold-rimmed glasses. Loser inquire at this office. 9-8tf

FOR SALE OR RENT—Corrugated iron warehouse, 40x100, on the railroad track. Inquire of Sullivan Co., Inc. 8-20-M

FOR SALE—Three-room house, furnished; electric lights. \$150. tf

FOR SALE—One new two-horse power Wagner 60-cycle, single phase, electric motor; starter and fixtures complete. Address B, Bonanza office. tf

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Our reserve is alive with ducks. Deer, grouse and mountain quail in the near by hills, also good trout fishing almost at our door. Rates \$12.50, \$15.00 and \$17.50 per week, including baths.

Fare \$2.85 via V. & T. Ry., Reno to Minden, where our stage meets train daily; fine six-mile drive to the Springs.

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